

# COMMONWEALTH OF AUSTRALIA

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	<b>Family Name</b>						
	<b>Given Names</b>						
	<b>Student Number</b>						
	<b>Teaching Period</b>	Semester 2, 2015					
<b>FINAL EXAMINATION</b>		<b>DURATION</b>					
<b>LWZ204 – Constitutional Law</b>							
		<b>Reading Time:</b>	<b>20 minutes</b>				
		<b>Writing Time:</b>	<b>120 minutes</b>				

### INSTRUCTIONS TO CANDIDATES

1. The examination has only one section. You must answer any three of the five questions. The examination is worth 60% of the final grade.
2. Note that all questions ARE of equal value.
3. Read ALL questions carefully.
4. Do not commence writing until instructed to do so.
5. Writing on scrap paper during Reading Time is permitted. Scrap paper will be provided.

### EXAM CONDITIONS

This is an OPEN BOOK examination

No calculators are permitted

Any handwritten material is permitted

Any hard copy, dictionary is permitted (annotated allowed)

Answer on the supplied examination material/s only

ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED
Any printed material with the exception of CDU Library books	1 x 20 Page Book

**THIS EXAMINATION IS PRINTED  
DOUBLE-SIDED.**

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**Answer any three of the five questions.**

### **Question 1**

Mr Donald Lupton operated an irrigated horticultural farm that drew water from the Murray River under water entitlements arising under Victorian law, which is the *Horticulture Act 2001 (Vic)*. Mr Gerry James also operated an irrigated horticultural farm that also drew water from the Murray River but under water entitlements arising under South Australian law, which is the *Horticulture Act 2001 (SA)*.

Donald and Gerry were both very successful farmers. Donald sold his vegetables at the markets all over Australia and they were very popular. Gerry grew fruits at his farm and his fruits were very popular at the markets throughout Australia too. Donald and Gerry also hired Packings Ltd. to pack the vegetables and fruits for sale.

Donald and Gerry were involved in the operation of irrigated horticultural farms that draw water from the Murray River. Their farms depended a lot on the water that they draw from the Murray River. However, the enactment of the *Water Act 2015 (Cth)* has caused some problems for them as it abridged their right to use the waters of the Murray River for irrigation.

They believe that the *Water Act 2015 (Cth)* is constitutionally invalid because it affects the sale of their vegetables and fruits in trade and commerce.

Advise Donald and Gerry.

**(20 marks)**

### **Question 2**

“The narrow meaning of ‘establishing’ a religion given in the *DOGS Case* [the case that upheld the Commonwealth’s capacity to fund religious schools] means that s 116 provides a much less robust level of rights protection than the First Amendment to the United States Constitution, which has been understood to prohibit government from appearing to take a position on questions of religious belief or making adherence to religion relevant to a person’s political standing.”

- G Williams and D Hume, *Human Rights Under the Australian Constitution* (2nd ed), Oxford University Press (2013), p 265.

Discuss the statement above.

**(20 marks)**

### Question 3

The *Superannuation Contributions Imposition Act 2012 (Cth)* and the *Superannuation Contributions Assessment and Collection Act 2012 (Cth)* imposed a surcharge on high income members of defined benefit superannuation schemes. Avery Lowry and Mark Ingram were Deputy Commissioners of the Western Australian Police Force whose positions were listed in cl 3 of the *Salaries and Allowances Regulation 1975 (WA)*. Their salary was determined by the Salaries and Allowances Tribunal of Western Australia. The prescribed offices in cl 3 are:

- Information Commissioner
- Director, Office of Health Review
- Inspector of Custodial Services
- Deputy Commissioner of Police (Operations)
- Deputy Commissioner of Police (Specialist Services)
- Assistant Commissioners of Police
- Public Sector Commissioner
- Solicitor-General of the State of Western Australia
- Ordinary members and senior members of the State Administrative Tribunal
- Chief Executive Officer, Western Australian Tourism Commission

Avery was a Deputy Commissioner of Police for Operations, whilst Mark was a Deputy Commissioner of Police for Specialist Services. Mark and Avery were very hardworking and thus, they earned a high income. Therefore, a surcharge was imposed upon them. This made them very upset, as the surcharge was very high.

They contend that the surcharge could not be imposed because policing was a core function of state governments and commissioned police officers were at a sufficiently senior level within the state government to be immune from Commonwealth regulation. They argue that the Commonwealth Commissioner cannot impose a superannuation surcharge upon them.

Advise Avery and Mark.

**(20 marks)**

### Question 4

“The institutional arrangements and rules and principles which are the infrastructure of Australian constitutionalism are to be derived from the written Constitutions of the Commonwealth and the States, the unwritten conventions of behaviour under the Constitutions and the common law. Acceptance of those institutions, rules and principles by the institutional actors and wider Australian society is a necessary part of the content of our constitutionalism.”

- Chief Justice Robert French, ‘The Future of Australian Constitutionalism’ (A 21<sup>st</sup> Anniversary Celebration for the Centre for Comparative Constitutional Studies)

Discuss the statement above.

**(20 marks)**

### Question 5

“Since *McGinty* it has been clear, if it was not clear before, that the Constitution gives effect to the institution of ‘representative government’ only to the extent that the text and structure of the Constitution establish it. In other words, to say that the Constitution gives effect to representative government is a shorthand way of saying that the Constitution provides for that form of representative government which is to be found in the relevant sections. Under the Constitution, the relevant question is not, ‘What is required by representative and responsible government?’ It is, ‘What do the terms and structure of the Constitution prohibit, authorise or require?’”

- *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, at 566-7.

Discuss the statement above.

**(20 marks)**